

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HENRY PENNINGTON,

Petitioner,

vs.

SHERIFF GILLESPE, et al.,

Respondents.

Case No. 3:13-cv-00254-HDM-VPC

ORDER

Petitioner has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus. The court finds that petitioner is unable to pay the filing fee. The court has reviewed the petition, and petitioner will need to show cause why it should not be dismissed.

Although petitioner has used the petition form for a person in custody pursuant to a judgment of a state court, the allegations show that at the time he filed the petition he was a defendant in an open criminal case. Consequently, 28 U.S.C. § 2241 governs this petition. The court has reviewed the docket of the Eighth Judicial District Court of the State of Nevada in State v. Pennington, Case No. C-12-281632.¹ The last minute entry shows that petitioner had been discharged from inpatient services at the state mental health hospital and was receiving veteran services at the Salvation Army. The state district court ordered the case to be closed. Consequently, it appears that petitioner is not subject to a judgment of conviction and is not in the physical custody

¹<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=9293332> (report generated October 4, 2013).

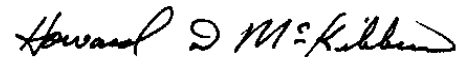
1 of respondent. If this is true, then there is no relief that the court can grant. Petitioner will need to
2 show cause why the court should not dismiss this action.

3 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is
4 GRANTED. Petitioner need not pay the filing fee of five dollars (\$5.00).

5 IT IS FURTHER ORDERED that the clerk of the court shall file the petition for a writ of
6 habeas corpus.

7 IT IS THEREFORE ORDERED that petitioner shall have 30 days from the date of entry of
8 this order to show cause why the court should not dismiss this action. Failure to comply with this
9 order will result in the dismissal of this action.

10 DATED: October 23, 2013.

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HOWARD D. MCKIBBEN
14 United States District Judge
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